



Order 2006-8-5

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 4th day of August, 2006

Served: August 9, 2006

In the matter of

**Expanded Air Services at the Antonio B. Won Pat
International Airport, Guam**

Docket OST-2006-23918

ORDER TO SHOW CAUSE

Summary

By this order we tentatively find that it is in the public interest to grant, in part, the request of the Territory of Guam to permit foreign air carriers to provide expanded services at Guam's Antonio B. Won Pat International Airport.

Background

The Department has taken various regulatory measures over the years to facilitate the operation of new international services to isolated or under-served points, thereby helping to offset significant locality disadvantages or service reductions.

In particular, in the cases of Alaska and Hawaii, we granted all foreign air carriers (except foreign air carriers of the United Kingdom) that have, or subsequently received, effective Department authority to engage in scheduled foreign air transportation of cargo (whether under authorizations permitting combination or all-cargo services), an exemption from 49 U.S.C. 41301 to engage in the following cargo transfer activities at Anchorage and Fairbanks International Airports, and Honolulu and Kona International Airports, respectively: (1) to transfer cargo from any of their aircraft to any of their other aircraft, provided that both aircraft are operating to/from a point in the carrier's homeland; (2) to make changes, at the named Alaskan and Hawaiian airports, in the type or number of aircraft used to transport cargo, provided that in the outbound direction the transportation beyond Alaska/Hawaii was a continuation of the transportation from the carrier's homeland to Alaska/Hawaii, and in the inbound direction, the transportation to the carrier's homeland was a continuation of the transportation from behind Alaska/Hawaii; (3) to commingle cargo moving in foreign air transportation with cargo traffic not moving in foreign air transportation; (4) to discharge cargo at Alaska/Hawaii for transfer to a U.S. carrier for onward

carriage to a final destination in the United States or in a third country, and to uplift from Alaska/Hawaii cargo transferred from a U.S. carrier which was transported by that carrier to those airports from a point of origin elsewhere in the United States or in a third country; and (5) to discharge cargo in Alaska/Hawaii for transfer to another foreign carrier for onward carriage to a final destination in a third country, and to uplift from Alaska/Hawaii cargo transferred from another foreign carrier which was transported by that carrier to those airports from a point of origin in a third country.¹

For both cases, we also granted all foreign air carriers (except foreign air carriers of the United Kingdom) that have, or subsequently received, the right to serve the United States, exemption authority to also serve any points in the respective state (Alaska or Hawaii), and to combine those services with those to other U.S. cities for which they held authority. In addition, we invited eligible foreign carriers to apply for authority to serve new U.S. points on an extrabilateral basis, so long as these flights also served Alaska or Hawaii, as applicable. In the most recent case, involving Hawaii, we stated that for a carrier to be eligible for the expanded extrabilateral authority, there must be a procompetitive agreement with the applicant's homeland country and that interested parties will be allowed to raise overriding public interest reasons for denying the requested authority.²

Application

On February 9, 2006, the Territory of Guam requested that we take measures "of identical scope" to those we took with respect to Alaska and Hawaii (described above) to promote increased U.S. and foreign air carrier activity at Guam's Antonio B. Won Pat International Airport.³ Specifically, Guam requests that we grant:

1. Blanket exemption authority to foreign air carriers which currently hold or subsequently receive effective Department authority to enable those carriers to engage in expanded cargo transfer activities at Guam with regard to cargo traffic moving between points in the Asia/Pacific region and points in the U.S. or third countries via an enroute transit stop in Guam, except in cases in which the Department determines that grant of such blanket authority is inconsistent with other U.S. international aviation policy requirements or objectives. Guam requests similar exemption authority for passenger transfer activities at Guam;
2. Blanket exemption authority to foreign air carriers which currently hold or subsequently receive effective Department authority to allow those carriers to serve Guam, and to coterminimize Guam with other points in the U.S. for which they hold effective Department authority; and
3. Specific exemption authority on application by individual foreign air carriers for authority to serve additional points in the mainland U.S. on an extra-bilateral basis, provided that such new passenger and cargo services also serve Guam.

In support of its request, Guam states that its proposal is wholly consistent with established principles and objectives of U.S. international aviation policy, and that the Department's

¹ See Order 96-11-2, served November 7, 1996 (Alaska), and Order 99-12-10, served December 14, 1999 (Hawaii). The authority granted in (4) and (5) did not permit cabotage operations by foreign carriers.

² See Order 99-12-10, served December 14, 1999.

³ Application of the Territory of Guam at 2-3.

previous findings in granting such relief with respect to Alaska and Hawaii apply equally to the Territory of Guam. Guam states that granting increased opportunities and incentives for foreign carriers to provide additional services utilizing Guam will provide substantial economic benefits to Guam through expanded air and ground activity at Guam's only commercial international airport, will provide economic benefits to U.S. air carriers through increased interline connecting and on-line code-share opportunities, and will provide additional support for Guam-based U.S. military activities and personnel. Finally, it states that grant of such relief will also help alleviate the adverse economic impact on Guam caused by recent declines in international tourism and air cargo activity, noting that both passenger and cargo traffic have shown an overall decline since 2001, notwithstanding marginal increases in both types of traffic since 2003. Guam also specifically cites the cessation of all-cargo service by Northwest Airlines, Inc. (Northwest) in September 2005, as evidence of its need for the requested relief.

Responsive Pleadings

Answers to Guam's application were filed by Continental Airlines, Inc./Continental Micronesia, Inc. (Continental/Continental Micronesia), Northwest, and United Air Lines, Inc. (United). Guam and the Airline Pilots Association (ALPA) filed replies, and Continental/Continental Micronesia filed a surreply.

Continental/Continental Micronesia and United do not oppose our granting authority which is identical in scope to that we granted for service to Alaska and Hawaii, but they oppose any expansion of that authority, and in particular oppose the grant of passenger transfer authority, which was not granted in the earlier cases. Continental/Continental Micronesia states that Guam passenger traffic is growing; that all U.S. open-skies partners already have the ability to serve Guam; and that any authority granted should be withheld from foreign carriers of China, Japan, the United Kingdom, and 'other similarly-situated countries' where the United States does not have open-skies aviation relationships. Finally, Continental/Continental Micronesia believes that we should limit any authority granted to a duration of one year, or at most, two years.

United states that the kinds of authority requested are more valuable for Guam than they were for Hawaii because of Guam's geographic location. It states that Guam's proximity to countries such as Australia, China, Hong Kong, the Philippines, and Vietnam, which have restrictive agreements with the United States, makes Guam an attractive transfer point for cargo and intermediate point for passengers. United states that, notwithstanding this situation, it does not oppose Guam's receiving the same authority as granted to Hawaii, but does oppose passenger transfer authority, as Guam has not supported that portion of the request. Finally, United believes that any applications we might receive from foreign carriers to serve additional U.S. points via Guam should be subject to being withheld from carriers of countries that impose unacceptable restrictions on U.S. carriers, and that applications for such extrabilateral authority be subject to the standards for approval set forth in Order 99-12-10 concerning grant of similar authority in the case of Hawaii.

Northwest and ALPA oppose the application. Northwest questions whether there is a need for this authority, given Guam's current service and the available bilateral rights to serve Guam. It also notes that it provides substantial service to Guam, and that Guam traffic is increasing. Northwest also states that, should we grant Guam's request, the authority should be withheld

from carriers from Australia, China, Japan, Hong Kong, and the United Kingdom until we achieve meaningful and reciprocal benefits through bilateral negotiations.

ALPA agrees with Northwest that the application should be denied as unneeded, but states that if we were to approve the request, we should limit the authority in the manner proposed by Continental/Continental Micronesia.

Guam, in its reply, states that none of the carriers objected to the Department's granting Guam the same authority previously granted for Alaska and Hawaii. Guam further states that the objections and concerns expressed by the carriers do not warrant denial of Guam's application for expanded air services, and states its view that our action granting authority for operations at Alaska included the ability for foreign carriers to engage in passenger transfer activities.

In its surreply, Continental/Continental Micronesia reiterates that Guam should not be granted any authority exceeding the cotermininal rights granted to Alaska and Hawaii or any authority for an indefinite duration; that the United States should give priority to achieving open-skies agreements that would provide expanded opportunities for service to Guam; and that Guam did not respond on the issue of precluding carriers from some countries from eligibility for the requested authority. Continental/Continental Micronesia states that if the Department grants Guam's application, it should preclude carriers of Australia, China, Hong Kong, Japan and the United Kingdom from participating in the blanket exemptions granted. Continental/Continental Micronesia further states that the passenger transfer authority Guam seeks would raise cabotage enforcement issues.

Tentative Findings and Conclusions

We have tentatively decided to grant, in part, Guam's request. Specifically, we have tentatively decided to accord Guam treatment directly comparable to that which we have previously accorded Alaska and Hawaii. In this regard, we tentatively find that it is consistent with the public interest to grant exemption authority, except as noted below, to foreign air carriers which currently hold, or which may subsequently receive, effective Department authority to engage in scheduled foreign air transportation of cargo: (1) to conduct expanded cargo transfer operations at Guam's Antonio B. Won Pat International Airport (as more fully described below) and (2) to serve Guam and to cotermininalize Guam with other U.S. points for which they hold our authority. We are also proposing to invite eligible foreign carriers to apply for authority to serve new U.S. points on an extrabilateral basis, so long as these flights also serve Guam, and subject to the standard that there must be a procompetitive agreement with the applicant's homeland country and that interested parties will be allowed to raise overriding public interest reasons for denying the requested authority.⁴

We find that these proposed actions are consistent with the public interest, as they will provide important benefits to the Territory of Guam, its economy, and the traveling and shipping public.

We propose to make this authority effective for two years from the date this action becomes final, and to reserve the right to amend, modify or revoke this exemption authority at any time and to do so without hearing, should circumstances warrant.

⁴ We believe that this condition will bring about the desired benefits for Guam without compromising our ability to protect the full range of important U.S. aviation interests or hampering U.S. negotiating ability. *See* Order 99-12-10 at 4-5.

In reaching our tentative decision, we find that Guam has demonstrated that its geographic and economic situation warrants grant of the same type of relief that we earlier granted for Alaska and Hawaii. We recognize that air service is vitally important to the Territory of Guam, and that Guam, like Alaska and Hawaii, is geographically isolated and heavily dependent on air transportation as a vital element of its economy. In its request for relief, Guam has provided specific evidence of the impact that the territory has suffered because of the recent declines in the level of international tourism and air cargo activity, levels which, notwithstanding recent increases, have not recovered to pre-2001 levels. With these considerations in mind, we conclude that Guam has succeeded in demonstrating that a public interest basis exists for the type of relief we propose to confer, and we view the public interest basis as persuasive.

As we did in the cases of Alaska and Hawaii, we tentatively find that we should exclude foreign carriers from some countries from eligibility for the relief at issue here. As in those earlier cases, we propose to exclude carriers of the United Kingdom. In addition, we believe that in the context of authority involving Guam, it is in our aviation interests to bar carriers from the following countries from receiving this extrabilateral authority: Australia (for passenger or combination services only), China, and Japan. In the case of Australia, the bilateral aviation agreement limits U.S. carriers conducting passenger or combination service to Guam.⁵ For China and Japan, we are trying to negotiate additional rights for U.S. carriers to serve Guam. We believe that granting the relief at issue here to carriers of China and Japan could impede our efforts.⁶

As an additional matter, we have tentatively decided to deny Guam's request to the extent that it seeks authority for foreign carriers to conduct passenger transfer activities at Guam. We did not grant such authority as to Alaska and Hawaii and we tentatively have not found a persuasive basis on the record to go beyond the Alaska and Hawaii authorizations we have made previously.

In view of the foregoing and all facts of record, we tentatively find and conclude that:

1. It is in the public interest to grant to all foreign air carriers (except as noted in paragraph 6) which currently hold, or which may subsequently receive, effective Department authority to engage in scheduled foreign air transportation of cargo (whether under authorizations permitting combination or all-cargo services), an exemption from 49 U.S.C. 41301 to engage in the following cargo transfer activities at Guam's Antonio B. Won Pat International Airport: (1) to transfer cargo from any of their aircraft to any of their other aircraft, provided that both aircraft are operating to/from a point in the carrier's homeland; (2) to make changes, at Guam's Antonio B. Won Pat International Airport, in the type or number of aircraft used to transport cargo, provided that in the outbound direction the transportation beyond Guam is a continuation of the transportation from the carrier's homeland to Guam, and in the inbound direction, the transportation to the carrier's homeland is a continuation of the transportation from behind Guam; (3) to commingle cargo moving in foreign air transportation with cargo traffic not moving in foreign air transportation; (4) to discharge cargo at Guam's Antonio B. Won Pat International

⁵ Our Agreement with Australia includes open-skies provisions for all-cargo operations (provisions which are currently in effect on the basis of reciprocity); therefore, we would not withhold eligibility from Australian carriers conducting all-cargo services.

⁶ We will not expand the list of ineligible carriers to include those from Hong Kong, as suggested in the responsive pleadings, since the U.S.-Hong Kong Air Services Agreement does not have any specific restrictions on service to Guam.

Airport for transfer to a U.S. carrier for onward carriage to a final destination in the United States or in a third country, and to uplift from Guam cargo transferred from a U.S. carrier which was transported by that carrier to Guam from a point of origin elsewhere in the United States or in a third country; and (5) to discharge cargo at Guam's Antonio B. Won Pat International Airport for transfer to another foreign carrier for onward carriage to a final destination in a third country, and to uplift from Guam's Antonio B. Won Pat International Airport cargo transferred from another foreign carrier which was transported by that carrier to Guam from a point of origin in a third country;

2. Our action in paragraph 1 above would not permit (1) the carriage of traffic by a foreign air carrier, in its own name and under its code, from any point in the carrier's homeland to a point in the United States not otherwise authorized by the Department from that homeland point; (2) the carriage of traffic by a foreign air carrier, in its own name and under its code, from any third country point to a point in the United States except as otherwise authorized by the Department; (3) code-share operations to U.S. points unless both carriers otherwise hold Department authority between the points involved and the requisite Statement of Authorization; and (4) cabotage operations;⁷

3. It is in the public interest to grant all foreign air carriers which currently hold, or which may subsequently receive, effective Department authority to engage in scheduled foreign air transportation, except as noted in paragraph 6 below, an exemption from 49 U.S.C. 41301 to allow them to serve Guam and to coterminalize Guam with other U.S. points for which they hold Department authority;

4. The authority described above should be effective on the date of issuance of a final order in this proceeding, and should remain in effect for two years;

5. It is in the public interest to invite eligible foreign air carriers, except as noted in paragraph 6 below, to apply for exemption authority to serve additional U.S. points on an extrabilateral basis, where those additional points would be served only on flights also serving Guam;

6. Grant of this authority should not apply to foreign air carriers of Australia (for passenger or combination services only), China, Japan, and the United Kingdom, and these carriers shall be deemed not to meet the eligibility standards set forth in this order; and

7. It is not in the public interest to grant foreign air carriers the authority requested by Guam to engage in passenger transfer activities at Guam.

ACCORDINGLY,

1. We direct all interested persons to show cause why the tentative decision set forth above should not be made final;

2. Any interested person objecting to the issuance of an order making final our tentative findings and conclusions shall, no later than fourteen (14) days after the date of service of this order, file with the Department and serve on the parties who have filed pleadings in Docket OST-2006-23918, a statement of objections specifying the part or parts of the tentative findings and

⁷ Cabotage operations would include the carriage by a foreign air carrier of cargo between Guam and other U.S. points for transfer to either a U.S. air carrier, or another foreign air carrier for carriage between Guam and a foreign point, in either direction. *Qantas Empire Air, Foreign Transfer Traffic*, 29 C.A.B. 33 (1959).

conclusions objected to. If objections are filed, answers to objections are due no later than seven (7) calendar days thereafter;⁸

3. If timely and properly supported objections are filed, we will give further consideration to the matters and issues raised by the objections before we take further action;

4. In the event no objections are filed, we will deem all further procedural steps to be waived, and we will enter an order which will make final our tentative findings and conclusions set forth in this order; and

5. We will serve a copy of this order on all U.S. certificated and foreign air carriers, all other parties to this proceeding, and the Department of State.

By:

MICHAEL W. REYNOLDS
Acting Assistant Secretary for Aviation
and International Affairs

(SEAL)

*An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp*

⁸ Since we have provided for the filing of objections to this order, we will not entertain petitions for reconsideration.